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August 19, 1999

By Hand

Magalie Roman Salas
Secretary
Federal Communications Commission
Room CY-A257
445 Twelfth Street, SW
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

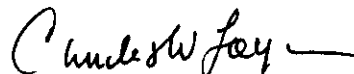
Re: Written *Ex Parte* Presentation
Application for Consent to the Transfer of Licenses and Section
214 Authorizations from Ameritech Corporation, Transferor, to
SBC Communications Inc., Transferee
CC Docket No. 98-141

Dear Ms. Salas:

Transmitted herewith for inclusion in the public record of the above-referenced "permit but disclose" proceeding are two copies of a written *ex parte* presentation that was delivered this day to Robert Atkinson, Deputy Chief of the Common Carrier Bureau, Thomas Krattenmaker of the Office of Plans and Policy, and Michelle Carey and William Dever of the Common Carrier Bureau.

Please direct any questions concerning this filing to Richard Metzger or the undersigned.

Sincerely,



Charles W. Logan

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August 19, 1999

By Messenger

Robert Atkinson, Deputy Chief
Common Carrier Bureau
Federal Communications Commission
445 Twelfth Street, SW -- Suite 5-C356
Washington, D.C. 20554

Re: CC Docket No. 98-141

Dear Mr. Atkinson:

During our recent meeting with you and other members of the Commission staff to discuss the views of NorthPoint Communications, Inc. (NorthPoint) on the proposed SBC/Ameritech merger, NorthPoint was asked to provide some additional information to clarify its position on certain issues. This letter contains NorthPoint's responses to those requests.

Separate Affiliate: As NorthPoint discussed in the meeting, transactions between SBC/Ameritech incumbent LECs and their advanced services affiliates should be conducted on an arms' length basis and subject to public review and audit. The value of the separate affiliate is that it provides a structural mechanism to ensure non-discrimination and by so doing should minimize the need for involvement by the Commission and State Commissions in policing incumbent LECs' treatment of competitive LECs. This goal can only be achieved if the separate affiliate and the incumbent abide by the requirement that the relationship be at arms' length. There are a number of mechanisms for ensuring compliance with the non-discrimination requirement, such as regular audits, posting of transactions, or other measures to increase the visibility of the relationship between the incumbent LEC and the affiliate.

NorthPoint favors the application of the rules that the Commission adopted to implement Section 272(b)(5) of the Communications Act of 1934, as amended, to the advanced services affiliate(s) of SBC/Ameritech.¹ NorthPoint recognizes, however, that

¹ See *Implementation of the Telecommunications Act of 1996: Accounting Safeguards*, 11 FCC Rcd 17539, 17593 (1996).



SBC/Ameritech have raised concerns that certain disclosure requirements imposed by those rules would result in the publication of competitively sensitive information. To the extent the Commission gives weight to SBC/Ameritech's asserted concerns, NorthPoint submits that the Proposed Conditions could be amended to address the disclosure of: (a) the prices and quantity of unbundled loops furnished to their advanced services affiliate(s); and (b) the charges and provisioning intervals for conditioning loops furnished to their advanced services affiliate(s).

Specifically, NorthPoint believes it would be reasonable to modify the FCC's Section 272(b)(5) disclosure requirements in some respects for purposes of the conditions governing the advanced services affiliate(s). NorthPoint submits that the following two paragraphs could be inserted after Paragraph 38 of the Proposed Conditions:

39. SBC/Ameritech shall maintain internal records that document on a state by state basis the price, quantities and other material terms of transactions between the SBC/Ameritech incumbent LECs and advanced services affiliates, including, without limitation, the charges assessed for the provision of unbundled loops and for the conditioning of such loops to the affiliates. To the extent that SBC/Ameritech's current procedures for recording incumbent LEC/affiliate transactions maintain such information in a manner that can be retrieved reasonably, this condition shall not require the creation of new internal records. The internal records shall be made available for review by an independent auditor on a semi-annual basis, beginning six months after the first transaction between the incumbent LEC and affiliate and continuing for four such semi-annual audits. Thereafter, the audits shall be conducted annually until the separate affiliate condition expires. The selection of the independent auditor and each such audit shall comply with the requirements set forth in Paragraph 62(d) below except as expressly provided herein. Upon completion of each such semi-annual and annual audit, the auditor shall attest as to whether or not the internal records furnished to the auditor demonstrate that the prices and other terms and conditions of the transactions between the SBC/Ameritech incumbent LECs and affiliates conform to the terms and conditions set forth in the interconnection agreement between the parties. The SBC/Ameritech internal records shall be made available, upon request, to the FCC and appropriate state commission staff.

40. SBC/Ameritech shall furnish the records and reports required under performance measurement 6 (*see* Attachment A-2) regarding advanced services installation intervals, as well as equivalent information regarding the provisioning of shared unbundled loops (if applicable), to an independent auditor on a semi-annual basis, beginning six months after the incumbent LECs accept the first order for an unbundled loop from their affiliates and continuing for a total of four such audits. Thereafter, the audits shall be conducted on an annual basis until the separate affiliate condition expires. The selection of the independent auditor and each such audit shall comply with the requirements set forth in Paragraph 62(d) below except as expressly provided herein. The auditor shall attest as to whether or not the records and reports furnished to the auditor demonstrate that the average provisioning intervals for unbundled loops, shared lines and line conditioning provided by SBC/Ameritech incumbent LECs for competitive LECs that request such elements and services do not exceed the provisioning intervals for such elements and services provided by

SBC/Ameritech incumbent LECs to their advanced services affiliates. The SBC/Ameritech records and reports shall be made available, upon request, to the FCC and appropriate state commission staff.

To ensure that the installation intervals provide useful measurements, NorthPoint recommends that SBC/Ameritech's proposed performance measurement 6 be clarified and modified in two respects. First, the report structure section of this measurement should clearly state that the required data and reports will be issued for the SBC/Ameritech separate advanced services affiliates as well as for all competitive LECs. Second, the "application date," which represents the start-point for measuring the installation interval, should be revised. For both loops that require conditioning and those that do not, the application date should be the date the customer initially authorizes SBC/Ameritech to provision the advanced services. As presently worded, performance measurement 6 delays the application date and the start of the measurement period until the loop qualification determination has been made. The timing of the loop qualification process, however, should be encompassed in the provisioning interval to ensure that the SBC/Ameritech incumbent LEC implements this process on a non-discriminatory basis.

Timely Implementation of Line Sharing: In its comments on the proposed merger conditions, NorthPoint noted that the "pre-conditions" concerning technical feasibility and commercial availability of equipment for the implementation of two-carrier line sharing were inappropriate. (See SBC/Ameritech Proposed Conditions, ¶ 33). Incumbent LEC claims that two-carrier line sharing is not imminently achievable ring hollow given SBC/Ameritech's apparent intention to implement such two-carrier line sharing with their advanced services affiliate(s) as soon as possible; indeed, paragraph 34 of their Proposed Conditions would permit them to provide line sharing to their separate affiliates on an exclusive basis pending the implementation of their obligation to provide line sharing to competitive LECs. Clearly, if it is technically feasible and the necessary equipment is available for SBC/Ameritech advanced services affiliates to perform line sharing, the same can be said for line sharing by competitive advance services providers.

Further, contrary to the implicit statement in condition (b) of paragraph 33, there is substantial evidence that the equipment necessary to perform two-carrier line sharing is currently available in commercial volumes.² Several vendors, including Cisco, Microphase, Siecor, Wilcom, Newbridge, and Fujitsu, among others, have confirmed that they already manufacture central office (CO) splitter devices compliant with T1.413 Annex E. Indeed, Microphase, Siecor, and Wilcom have confirmed to NorthPoint in writing that they presently manufacture and are prepared to ship such CO splitter devices in commercial volumes within 4 to 12 weeks after the adoption of an FCC line-sharing requirement, and anticipate readily meeting demand that may be precipitated by such a

² It is not clear what basis there is for including such a condition in the first instance, and NorthPoint does not believe it is appropriate to allow third-party vendors or SBC/Ameritech to determine when to produce or when such production achieves a sufficient rate that consumers should be permitted to enjoy the benefits of line sharing. Were the Commission to require that line sharing be implemented by a date certain, as it should, ILECs and CLECs alike would ensure that there was sufficient demand for appropriate equipment at appropriate volumes.

requirement. The proposed condition, in which the implementation of line sharing awaits supply, is fundamentally flawed and should be stricken.

Charges for Line Conditioning: NorthPoint pointed out in our meeting that the charges for line conditioning proposed by SBC/Ameritech are excessive and have not been accepted by any state commission. NorthPoint also noted that in some states, such as in Texas, the SBC incumbent LEC proposed to impose no charge for line conditioning during an interim basis until the Texas Commission sets TELRIC rates. Consequently, in NorthPoint's view, the Commission would have a reasonable basis for concluding that SBC/Ameritech similarly should impose no charges for line conditioning in connection with the provision of line sharing pursuant to their proposed conditions. Alternatively, NorthPoint would not object to the charges for line conditioning suggested by Sprint,³ provided that the other limitations recommended by NorthPoint in its comments are also adopted. *See* Comments of NorthPoint at 16-17 (urging FCC to revise Attachment C of SBC/Ameritech Proposed Conditions to make clear that conditioning charges may only be assessed when the conditioning work is in fact required, and may not be assessed to condition a line which would not require such conditioning if the incumbent LEC's network were configured efficiently, e.g., requiring removal of loading coils on loops less than 12 to 18,000 feet).

Competitive LEC Access to Loop Qualification Data: NorthPoint explained in our meeting the importance of obtaining access to the data that incumbent LECs maintain regarding the feasibility of providing xDSL services over local loops. Today, incumbent LECs assemble raw loop makeup information into system interfaces in a format that is useful only for their own retail ADSL offerings, and decline to assemble such data in a manner useful for competitive LECs' varied DSL offerings.

For example, although NorthPoint's SDSL service will work acceptably on clean copper (DSL-capable) loops at lengths up to 24,000 feet, and its IDSL service on ISDN-capable loops exceeding 36,000 feet, the incumbent LEC retail ADSL service is not offered on loops over 18,000 feet and often not offered to customers on loops from 12,000 to 18,000 feet. The loop information provided by the incumbent LEC assumes incorrectly, in effect, that the competitive LEC offerings operate under the same service limitation. As a result, NorthPoint unbundled loop orders for customers more than 18,000 from the central office are returned as "ineligible" and customers on loops from 12,000 to 18,000 may be flagged as "potentially ineligible." These labels reflect service characteristics of incumbent LEC retail offerings and do not reflect the capabilities of NorthPoint's superior SDSL offerings.

These constraints on pre-order loop makeup data by necessity limit the ability of competitive LECs to roll out differentiated and superior products in a timely and nondiscriminatory manner. Incumbent LECs should therefore be required either (1) to prepare system interfaces that pre-qualify loops based on the retail offering of each competitive LEC for each product as the incumbent LEC does for its own retail services;

³ *See* Comments of Sprint Communications Company L.P. on Proposed Conditions, at 14 (July 19, 1999).

or (2) make available to competitive LECs, in a mutually acceptable format, electronic access to underlying loop makeup data (length, gauge, bridged taps, *etc.*) in a manner that permits the competitive LEC to evaluate the capabilities of the loop to provide a variety of DSL services other than incumbent LEC ADSL retail offerings.

This is especially important to facilitate the deployment of innovative DSL solutions in less densely populated and rural areas, where longer loop lengths permit competitive LECs to deploy DSL services where incumbent LEC ADSL is not offered. Without adequate loop makeup data, the ability of competitive LECs to deliver innovative and advanced DSL services to rural and suburban users is constrained by the incumbent LECs' inferior products.

For these reasons NorthPoint submits that paragraph 23 of the SBC/Ameritech Proposed Conditions should be deleted and paragraphs 21-22 should be revised and clarified as follows:

21. SBC/Ameritech shall provide to unaffiliated CLECs at the pre-order stage nondiscriminatory, electronic OSS access to both Loop Pre-Qualification Information and Loop Qualification Information, as defined in sub-paragraphs a and b below.

a. Loop Pre-Qualification Information shall be provided on an individual address basis and include whether the theoretical loop length is: (1) less than 12,000 feet from the customer premise to the central office; or (2) between 12,000 and 17,500 feet from the customer premise to the central office; or (3) greater than 17,500 feet from the customer premise to the central office.

b. Loop Qualification Information shall include: (1) loop gauge and loop length; (2) whether the loop contains devices such as bridged taps, load coils, repeaters, pair-gain devices, digital loop carriers, digital added main lines, or other devices that may impair advanced services; (3) the number, length and approximate location of such devices; and (4) whether there is an alternative copper loop on which Advanced Services could be provisioned with less, or no, conditioning to the end-user address.

c. This information shall be available not later than the Merger Closing Date in all SBC States except Connecticut and Nevada. This information shall be made available in Connecticut, Nevada, and the Ameritech States, on a phased-in basis, by no later than 22 months after the Merger Closing Date.

22. SBC/Ameritech shall provide CLECs in the SBC/Ameritech States with nondiscriminatory, electronic access to Loop Pre-Qualification Information and Loop Qualification Information, as defined in sub-paragraphs 21(a)-(b), for xDSL services. This information shall be (1) accessible via the world wide web on the Internet unless the unaffiliated CLEC and SBC/Ameritech agree to an alternative means of electronic access that employs a mutually acceptable format and schedule for accessing updated information; and (2) available on a mass market basis (e.g., based upon a zip code of end users within a wire center) at no charge, beginning 12 months after the Merger Closing Date.

August 19, 1999

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We hope that this information is useful. Should you have any questions, please do not hesitate to contact me.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael Olsen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Olsen

CC: Magalie Roman Salas, FCC Secretary
Thomas Krattenmaker
Michelle Carey
William Dever